

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LLOYD WIBBELMAN,

Appellant,

V.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-166

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of respondent's Sections 8.02 and 8.05 of Regulation I, came on for hearing before the Pollution Control Hearings Board, David Akana and Gayle Rothrock, Members, convened at Lacey, Washington on March 31, 1982. Administrative Law Judge William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant, Lloyd Wibbelman, appeared and represented himself; respondent appeared by its attorney, Keith D. McGoffin.

Witnesses were sworn and testified. Exhibits were examined. From

1 testimony heard and exhibits examined, the Pollution Control Hearings
2 Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260 has filed with this Board a
6 certified copy of its Regulation I containing respondent's regulations
7 and amendments thereto of which official notice is taken.

8 II

9 Appellant, Lloyd Wibbelman, owns a site in rural Snohomish
10 County. The site is partially cleared, and has been used as a storage
11 or disposal site for 100,000 wooden boxes. There is also an old
12 building on the site which appellant intends to demolish.

13 III

14 On September 5, 1981, appellant obtained a permit for outdoor
15 burning from his local fire district, No. 111. That permit authorized
16 the burning of:

- 17 1. Natural Vegetation
18 2. In a small pile not exceeding 4 feet in diameter and
19 3 feet high.

20 Appellant knows that natural vegetation does not include boards or
21 lumber. Despite this he contends that the volunteer fire fighter on
22 duty at the fire station advised him that the old building could be
23 burned in small piles (but that this advice could not be written on
24 the permit). The fire station where appellant obtained his permit has
25 no written information concerning respondent's outdoor burning rules,

1 and volunteers issuing fire permits do not receive training about
2 those rules. Appellant obtained no prior written approval from
3 respondent for outdoor burning.

4 IV

5 On September 5, 1981, appellant ignited a fire of natural
6 vegetation and untreated lumber which burned in a pile some 10 feet by
7 15 feet. Responding to a report of this fire, the fire district
8 arrived at the scene, and extinguished the fire. Appellant aided the
9 process of extinguishment by pushing dirt and debris onto the fire
10 with his tractor. Wire, rubber, and an oil filter were among the
11 debris which appellant pushed onto the fire causing rubber and
12 petroleum to burn.

13 V

14 On September 9, 1981, at the request of the fire district,
15 respondent's inspector arrived at the scene. He observed the fire
16 contents described above although the fire was only smoldering.
17 Appellant later received from respondent a Notice and Order of Civil
18 Penalty assessing a \$250 civil penalty for violation of Sections 8.02
19 and 8.05 of respondent's Regulation I. From this appellant appeals.

20 VI

21 Appellant has no record of prior violations of respondent's
22 regulations.

23 VII

24 Any Conclusion of Law which should be deemed a Finding of Fact is
25 hereby adopted as such

26 From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Section 8.02 of respondent's Regulation I provides:

It shall be unlawful for any person to cause or allow any outdoor fire:

(1) in any area where the Board has prohibited outdoor burning under Section 11.01; or

(2) during any stage of an air pollution episode as defined in RCW 70.94.710 through 70.94.730; or

(3) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors; or

(4) for the purpose of demolition, salvage or reclamation of materials; or

(5) in violation of any applicable law, rule or regulation of any governmental agency having jurisdiction over such fire.

In causing a fire which contained lumber and was of excessive size, appellant violated his fire district permit and Section 8.02(5).

In attempting to extinguish the fire by piling it with debris containing rubber and petroleum which burned, appellant violated Section 8.02(5) and (3).

Respondent has not proven that the lumber was burned for the purpose of demolition as opposed to kindling for the natural vegetation. Appellant did not violate Section 8.02(4).

II

Section 8.05 of respondent's Regulation I provides:

It shall be unlawful for any person to cause or allow any outdoor fire other than land clearing burning or residential burning except under the following conditions;

(1) Prior written approval has been issued by the Control Officer or Board; and

1 (2) Burning is conducted at such times and under
2 such conditions as may be established by the Control
Officer or Board.

3 "Land clearing burning" and "residential burning" is limited to
4 materials not including wire, rubber or an oil filter. Sections
5 1.07(y) and (pp). In causing a fire containing wire, rubber, an oil
6 filter, wood and natural vegetation, without prior written approval
7 from respondent, appellant violated Section 8.05.

8 III

9 Because appellant has no prior violations and because he promptly
10 aided in extinguishing the fire the penalty should be partially
11 suspended by mitigation.

12 IV

13 Assuming for the sake of argument that the fire official issuing
14 the permit orally contradicted the permit's written terms, we would
15 not conclude that appellant could rely on that oral advice in good
16 faith or that such reliance should work to the appellant's benefit.
17 To avoid even the possibility of misunderstanding, however, each fire
18 station should have respondent's outdoor burning regulations on hand
19 for both fire officials and applicants to refer to.

20 V

21 Any Findings of Fact which should be deemed a Conclusion of Law is
22 hereby adopted as such.

23 From these Conclusions the Board enters this
24
25

ORDER

The \$250 civil penalty is affirmed provided, however, that \$125 thereof is suspended on condition that appellant not violate respondent's outdoor burning regulations for one year after receipt of this order. The remaining \$125 is affirmed.

DONE this 15th day of April, 1982.

POLLUTION CONTROL HEARINGS BOARD

David Akana
DAVID AKANA, Lawyer Member

Gayle Rothrock
GAYLE ROTHROCK, Vice Chairman

William A. Harrison
WILLIAM A. HARRISON
Administrative Law Judge